

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922

No. 388

THE STATE OF WASHINGTON, PLAINTIFF IN ERROR,

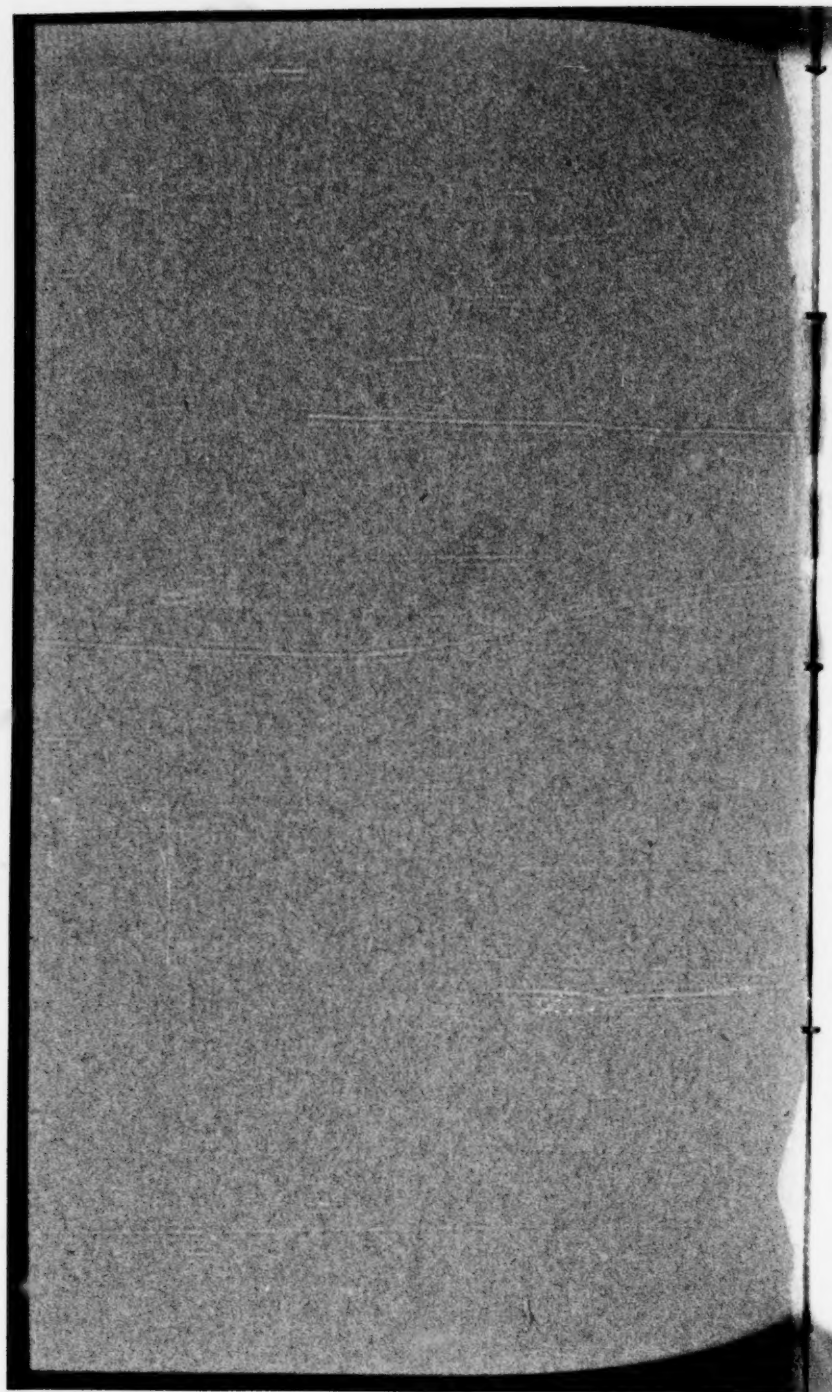
vs.

W. C. DAWSON & CO.

**IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON**

FILED JUNE 11, 1923

(29,676)



(29,676)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 366

THE STATE OF WASHINGTON, PLAINTIFF IN ERROR,

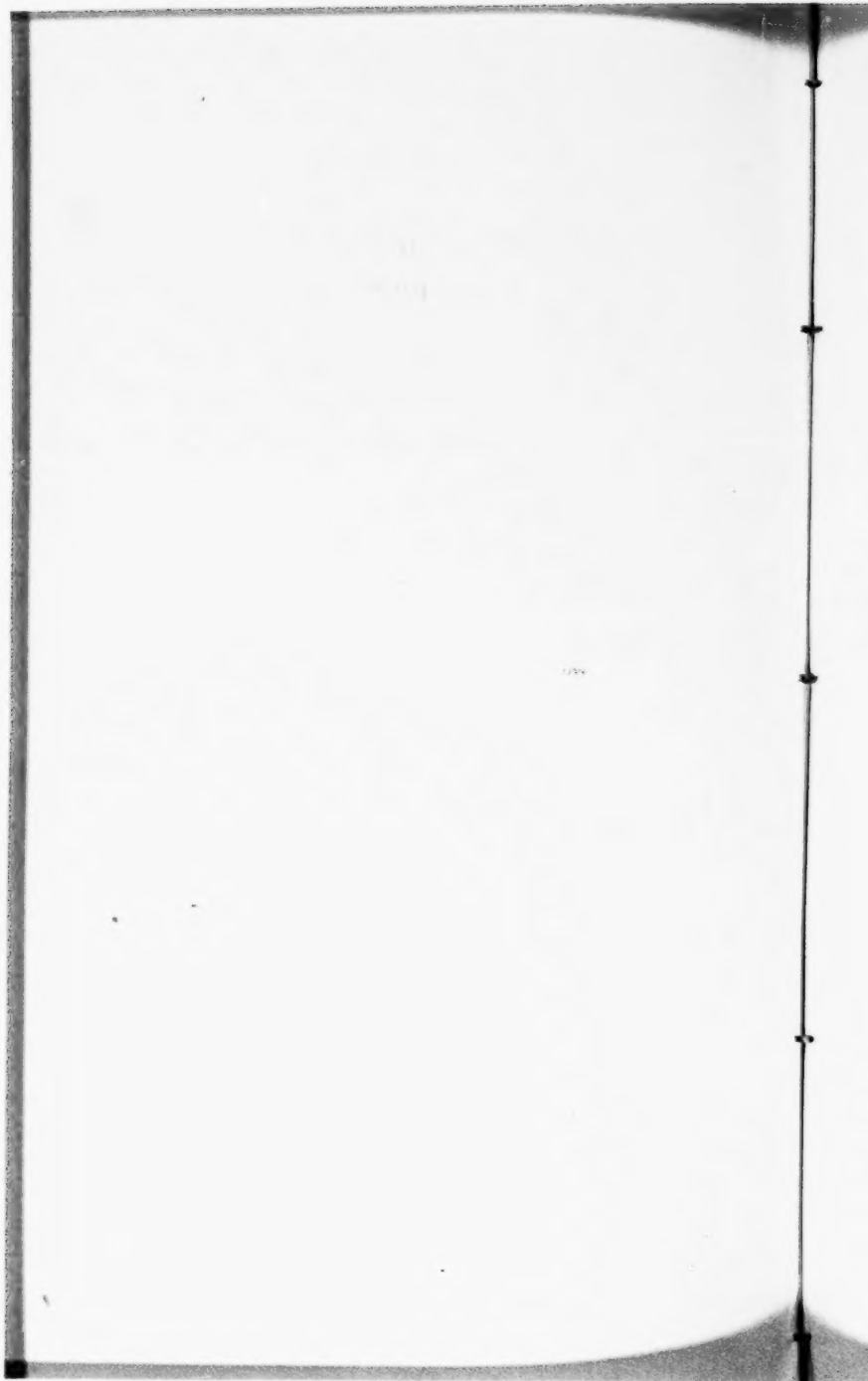
vs.

W. C. DAWSON & CO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF
WASHINGTON

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[fol. 1]

IN THE

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY**

No. 161,228

THE STATE OF WASHINGTON, Plaintiff,

v.

W. C. DAWSON & Co., a Corporation, Defendant

COMPLAINT—Filed Sept. 6, 1922

Comes now the plaintiff, and for a cause of action against the defendant, alleges as follows:

I. That during all the times hereinafter mentioned, the defendant was a corporation duly organized under the laws of the state of Washington.

II. That defendant was engaged from June 10, 1922 to July 31, 1922, in the business, industry or operation of stevedoring in the county of King, State of Washington.

III. That under and by virtue of and in accordance with the provisions of chapter 74, Laws of Washington for 1911 and amendatory acts thereto, the said business, industry or operation of stevedoring is classified for the purpose of determining the amount of its contribution to the accident fund created by said law under Class 42, That on the 7th day of November 1921, the industrial insurance department created by the law aforesaid, acting pursuant to authority vested in it, passed a resolution determining and establishing a percentage for the business, industry or operation of stevedoring, and fixing the same at one and one-half per cent, of the total amount of the payroll for workmen engaged in said business, industry or operation of stevedoring in the extra hazardous employment or departments thereof, a copy of which resolution is hereto attached, marked "Exhibit A," and by this reference made a part of this complaint.

[fol. 2] IV. That on June 10, 1922, the Congress of the United States of America passed an act amending section 24 and section 256 of the Judicial Code, which read as follows:

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it, and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel their rights and remedies under the

workmen's compensation law of any State, District, Territory, or possession of the United States, which rights and remedies when conferred by such law shall be exclusive; of all seizures on land or waters not within admiralty and maritime jurisdiction; of all prizes brought into the United States; and of all proceedings for the Condemnation of property taken as prize; Provided, That the jurisdiction of the district courts shall not extend to causes arising out of injuries to or death of persons other than the master or members of the crew, for which compensation is provided by the workmen's compensation law of any State, District, Territory, or possession of the United States.

"Sec. 2. That clause 3 of section 256 of the Judicial Code is hereby amended to read as follows:

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel, their rights and remedies under the workmen's compensation law of any State, District, Territory, or possession of the United States."

For the period from June 10, 1922 to July 31, 1922, inclusive, defendant was engaged in the business, industry or operation of stevedoring, as aforesaid. The actual amount of his payroll for workmen employed by him in that business, industry or operation in the extra hazardous employment or departments thereof, for said [fol. 3] period, was the sum of \$14,096.80. There therefore became due and owing from defendant to the plaintiff under the provisions of the aforesaid law and the aforesaid resolution of November 7, 1921, a premium or payment for the accident fund at the rate of one and one-half per cent. upon said sum of \$14,096.80, or a premium of \$211.45. That on or about August 16, 1922, plaintiff demanded said defendant to pay the sum of \$211.45, above mentioned, but that defendant failed and refused to pay the same, and ever since has so failed and refused. That by reason of the foregoing facts, there became due and owing from defendant to plaintiff for said accident fund, the sum of \$211.45, no part of which has been paid, and all of which is justly due, owing and payable as aforesaid.

V. That the business of operation of stevedoring is, in fact, extra hazardous.

VI. That during all of the times hereinbefore mentioned, all workmen so employed by said defendant in said business of stevedoring, were at all times during said employment working on board ships afloat in the navigable waters of Puget Sound and in the State of Washington, and that none of said workmen were masters or members of crews of said ships, or any of them, or of any ships whatever.

Wherefore plaintiff demands judgment against the defendant in the sum of \$211.45, together with its costs and disbursements herein.

L. L. Thompson, Attorney General. John H. Dunbar, Assistant Attorney General, Attorneys for Plaintiff.

[fol. 4] Affidavit of J. F. Heemans above paper omitted in printing.

"EXHIBIT A" TO COMPLAINT

Olympia, Washington, November 7, 1921.

The Administrative Board of the Industrial Insurance and Safety Divisions of the Department of Labor and Industries held a meeting in the office of the Director in the Insurance Building at Olympia, Washington, today, the following members being present:

Edward Clifford, Director.

E. S. Gill, Supervisor of Industrial Ins.

H. L. Hughes, Supervisor of Safety.

Moved by Supervisor Gill that the following changes in classification and rates be made effective January 1, 1922:

Class 42:

42-1. Wharf operations, $1\frac{1}{2}\%$ E.

Longshoring, $1\frac{1}{2}\%$ E.

Motion carried, all present voting aye.

I, Frances Whiting, being the duly qualified and acting secretary of the Department of Labor and Industries do hereby certify that the attached is a true and correct copy of excerpts of minutes of November 7, 1921.

Frances T. Whiting, Secretary of Department of Labor and Ind.

[File endorsement omitted.]

Assigned to Department No. 3. Austin E. Griffiths, Presiding Judge.

[fol. 6] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

[Title omitted]

DEMURRER—Filed Sept. 13, 1922

Comes now the above named defendant by its attorneys Cosgrove & Terhune, and demurs to plaintiff's complaint herein on the following grounds:

I. That said complaint does not state facts sufficient to constitute a cause of action.

II. That the Act of June 10, 1922, of the Congress of the United States of America referred to in paragraph IV of plaintiff's complaint is repugnant to and in conflict with section 2, Article 3, of the Constitution of the United States of America, and therefore of no force and effect.

Cosgrove & Terhune, Attorneys for Defendant.

Copy of within Demurrer received and due service of same is acknowledged this 7 day of Sept., 1922.

L. L. Thompson, John H. Dunbar, Attorney- for Plaintiff.

[File endorsement omitted.]

[fol. 7] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY

[Title omitted]

ORDER SUSTAINING DEMURRER—Filed Sept. 13, 1922

This cause coming on regularly before the court this 13th day of September, 1922, upon the demurrer of the above named defendant, all parties appearing by their respective counsel and the cause having been submitted to the court,

It is hereby considered, ordered, adjudged and decreed, that the defendant's demurrer be, and the same is hereby sustained.

To which ruling the plaintiff excepted, and the same is hereby allowed.

Done in open court this 13th day of September, 1922.

Mitchell Gilliam, Judge.

O. K. as to form. L. L. Thompson, John H. Dunbar, Atts. for Plaintiff.

[File endorsement omitted.]

[fol. 8] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY

[Title omitted]

ORDER OF DISMISSAL—Filed Sept. 13, 1922

This cause coming on regularly before the court this 13th day of September, 1922, on the application of the defendant for a dismissal of said action;

And it appearing to the court that it has heretofore sustained the said defendant's demurrer to plaintiff's complaint;

And it further appearing to the court that said plaintiff has refused to plead further;

Now therefore, it is

Considered, ordered, adjudged and decreed by the Court that said action be, and the same is hereby dismissed.

Done in open court this 13th day of September, 1922.

Mitchell Gilliam, Judge.

O. K. as to form. L. L. Thompson, John H. Dunbar, Atts. for Plaintiff.

[File endorsement omitted.]

[fol. 9] IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
KING COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed Sept. 13, 1922

To the above named defendant, W. C. Dawson & Co., and to Cosgrove & Terhune, its attorneys:

You, and each of you, are hereby notified that the above named plaintiff, The State of Washington, does hereby appeal to the Supreme Court of the State of Washington, from that certain final judgment entered in the above entitled court and cause on the 13th day of September, 1922, and from each and every part thereof, the same being a judgment dismissing plaintiff's action.

L. L. Thompson, Attorney General. John H. Dunbar, Assistant Attorney General, Atts. for Plaintiff.

Service of the above Notice of Appeal by receipt of a copy thereof is hereby admitted this 13th day of September, 1922.

Cosgrove & Terhune, Attys. for Defendant.

[File endorsement omitted.]

[fol. 10]

CLERK'S CERTIFICATE

STATE OF WASHINGTON,
County of King, ss:

I, George A. Grant, County Clerk, of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing is a full, true and correct transcript of so much of the record and files in cause No. 161228, entitled The State of Washington vs. W. C. Dawson & Co.,

a corp., as I have been directed by the Respondent to transmit to the Supreme Court of the State of Washington.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 15th day of September, 1922.

George A. Grant, County Clerk, etc., By W. T. Hatt, Deputy Clerk. [Seal of Superior Court of King County, Wash.]

[fol. 11] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

OPINIONS—Filed Feb. 16th, 1923

PER CURIAM: The opinion of the department which first heard this case is reported in 22 Wash. Dec. 355, — Pac. —. After the opinion was filed a petition for rehearing was presented, in which our attention was called for the first time to the case of the State Industrial Commission of the State of New York v. Nordenholt Corporation, U. S. Supreme Court Advance Opinions, No. 16, July 1, 1922, page 567. Upon the argument, when the case was heard En Banc, it was suggested that the statement in the opinion, to the effect that the work of a stevedore is maritime in its nature and a matter within the admiralty jurisdiction of the United States, was too broad, because it did not seem to recognize the two classes of stevedores. It appears that there are stevedores whose work is upon the dock or wharf, and also those whose work is upon the boat. The latter are sometimes called "water stevedores." The question whether the stevedores who work upon the dock may be brought within the workmen's compensation act of this state is not involved in this case. The question here has to do solely with those who work upon the water, and which work is maritime in its nature; and the rights and liabilities connected therewith are matters which are within the admiralty jurisdiction of the United States. The department opinion must be understood as referring only to those stevedores who work upon the boat. The case of State Industrial Commission v. Nordenholt Corporation, supra, is not out of harmony with the views expressed in the department opinion. In that case the question was whether a longshoreman working upon a dock was within the workmen's compensation act of the state of New York, and it was there held that he was under such act. That case is distinguishable from the one now before us because there the stevedore was working upon the dock, while here the attempt is to bring within the workmen's compensation act of this state those are working upon the water and whose work is therefore maritime in its nature. The stevedore who works upon the dock has a common law right of action which may be withdrawn and he required to take under the workmen's compensation act. The stevedore who works upon the boat or upon the water does not have a common law right of action which may be withdrawn and he be required to take under a compensation act. In the case above cited it is said:

"When an employee working on board a vessel in navigable waters sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading the vessel. In the former situation the liability of employer must be determined under the maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied. The liability of the employer for damages on account of injuries received on shipboard by an employee under a maritime contract is matter within the admiralty jurisdiction; but not so when the accident occurs on land."

The holding in the department opinion is adhered to and the judgment is affirmed.

[fol. 13]

IN THE

SUPREME COURT OF THE STATE OF WASHINGTON, JANUARY SESSION,
A. D. 1923

JUDGMENT

Be it remembered, That at a regular session of the Supreme Court of the State of Washington begun and holden at Olympia on the second Monday of January, A. D. 1923, it being the Eighth day of said month, among other, the following was had and done, to-wit:

Friday, February 16, 1923.

No. 17564

STATE OF WASHINGTON, Appellant,

vs.

W. C. DAWSON & Co., Respondent

Judgment

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 16th day of February, A. D. 1923, on motion of Cosgrove & Terhune of counsel for respondent considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed with costs; and that the said W. C. Dawson & Company have and recover of and from the said State of Washington the costs of this action taxed and allowed at Fifty-eight & 65/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 14]

IN THE

SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed Mar. 13, 1923

To the Honorable John F. Main, Chief Justice of the Supreme Court of the State of Washington:

The petition of the State of Washington respectfully shows that heretofore, to-wit, on the 13th day of September, 1922, there was tried in the superior court of King County, of the state of Washington, a case in which W. C. Dawson & Co. was defendant, and your petitioner was plaintiff. The declaration of the plaintiff in said case was an action instituted for the purpose of collecting premiums by virtue of the Workmen's Compensation Act of the state of Washington, on the payroll of workmen employed by the defendant who were stevedores engaged in stowing away the cargo of vessels lying on the navigable waters of Puget Sound within the boundaries of the state of Washington.

Upon the trial of said case in the superior court of King County, state of Washington, the defendant demurred to plaintiff's complaint on the ground, first, that the said complaint does not set out facts sufficient to constitute a cause of action, and second, that the act of June 10, 1922, of the Congress of the United States of America, referred to in paragraph IV of plaintiff's complaint, is repugnant to and in conflict with section 2, article III of the Constitution of the United States of America, and therefore of no force and effect.

The action of your petitioner was based on an act of Congress [fol. 15] amending sections 24 and 256 of the Judicial Code, approved June 10, 1922. Said demurrer was sustained by said court and thereupon there was a judgment in said cause by said court in favor of defendant and against your petitioner and dismissing your petitioner's said action. Whereupon your petitioner took an appeal to the supreme court of the state of Washington, that being the highest court of law or equity of the said state in which a decision could be had in said case, assigning therein as error the sustaining of said demurrer in said case by the said superior court of King County, of the state of Washington, and the judgment of said court dismissing said case in favor of the defendant.

The second ground of said demurrer is set out verbatim supra, and your petitioner shows that this ground raised and presented a federal question in said case, namely, first, whether the act of Congress amending sections 24 and 256 of the Judicial Code, approved June 10, 1922, is repugnant to and in conflict with section 2, article III of the Constitution of the United States of America, and therefore of no force and effect.

At the October term of the supreme court of the state of Washington, the appeal and its accompanying record came on to be heard and was argued in said supreme court and on the 20th day of

December, 1922, the said supreme court rendered its final judgment thereon, affirming the judgment of the court below, namely, the superior court of King County, for the state of Washington. On December 21, 1922, in conformity with the rules of court, your petitioner filed a petition for a rehearing in the above entitled case, which was, by the supreme court of the state of Washington, granted, and at the January term of the supreme court of the state of Washington, this cause was again argued and heard by the supreme court of the state of Washington en banc on January 26, 1923, and on [fol. 16] February 16, 1923, the said supreme court rendered its final judgment en banc, adhering to its former opinion of December 20, 1922, and affirming the judgment of the court below, namely, the superior court of King county, for the state of Washington.

Your petitioner further shows that said judgment of said supreme court was and is a final judgment in the highest court in the state of Washington in which a decision in said suit could or can be had.

Petitioner further shows that a federal question was made in said case, to-wit, as hereinbefore set out, and that said judgment of said supreme court was repugnant to and in conflict with the laws of the United States, and that said judgment of said supreme court was contrary thereto, and that a decision of said federal question was necessary to the judgment rendered, and that in said action, rights and privileges were claimed by your petitioner under the statutes of the United States and that the decision of this court was against the rights and privileges set up and claimed under said statutes of the United States.

Wherefore your petitioner prays that a duly authenticated transcript of the record, proceedings and papers herein, may be sent to the supreme court of the United States, and prays that a writ of error to said supreme court be allowed, that citation be granted and signed, that the bond herewith presented be approved, that the errors complained of may be reviewed in the supreme court of the United States, and the judgment aforesaid of said supreme court of the state of Washington be reversed.

The State of Washington, By its Attorneys, L. L. Thompson, Attorney General of the State of Washington; John H. Dunbar, Assistant Attorney General of the State of Washington, [fol. 17] Attorneys and Counsel for Petitioner.

Copy of within Petition received and due service of same is acknowledged, this 9 day of Mar., 1923.

Cosgrove & Terhune, Attorneys for Respondent.

[fol. 18] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Mar. 13, 1923

Comes now the plaintiff in error in the above entitled cause and avers and shows that in the record and proceedings in said cause the Supreme Court of the State of Washington erred to the grievous injury and wrong of the appellant in said cause, and to the prejudice and against the rights of plaintiff in error herein in the following particulars, to-wit:

I. The court erred in directing the sustaining of the demurrer of respondent in said Supreme Court, the defendant in error herein, to the complaint.

II. The court erred in entering judgment in said action against the appellant in said Supreme Court, the plaintiff in error herein, and dismissing its action.

III. The court erred in holding that the appellant in the Supreme Court, the plaintiff in error herein, had no right to collect from an employer engaged in the business of stevedoring a percentage of his payroll as premiums by virtue of the Workmen's Compensation Act of the State of Washington.

IV. The court erred in holding that the amendments to section 24 and section 256 of the Judicial Code approved by Congress on [fol. 19] June 10, 1922, was unconstitutional in that it is repugnant to and in conflict with section 2, article 3, of the Constitution of the United States of America, and therefore of no force and effect.

V. The court erred in not reversing the judgment of the superior court of King County of the State of Washington, and granting to the said appellant therein, the plaintiff in error herein, rights and privileges claimed therein under and by virtue of the amendments to section 24 and section 256 of the Judicial Code approved by Congress on June 10, 1922.

L. L. Thompson, Attorney General; John H. Dunbar, Assistant Attorney General, Attorneys for Plaintiff in Error.
Office and Post Office Address: Temple of Justice, Olympia, Washington.

Copy of within Assignments of Error received and due service of same is acknowledged, this 9 day of March, 1923.

Cosgrove & Terhune, Attorneys for Defendant.

[fol. 20] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

BOND OF WRIT OF ERROR—Filed Mar. 13, 1923

Know all men by these presents: That we, the State of Washington, as principal, and American Surety Co. of New York, as surety, are held and firmly bound unto W. C. Dawson & Co., a corporation, in the sum of One Thousand (\$1,000) Dollars, to be paid to the said obligees, their successors, representatives and assigns, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 13 day of March, 1923.

Whereas the above named plaintiff in error hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Washington;

Now, Therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute its said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

State of Washington, By John H. Dunbar, Asst. Atty. Gen.,
Principal. American Surety Company of New York, By
J. H. Brown, Resident Vice President, Surety. Attest:
R. W. Price, Resident Assistant Secretary. (Seal.)

[fol. 21] THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed Mar. 13, 1923

The above entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Washington, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the record in said matter,

It is ordered that a writ of error be and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be and the same is hereby approved.

John F. Main, Chief Justice of the Supreme Court of the State of Washington.

Copy of within Order received and due service of same is acknowledged, this 9 day of March, 1923.

Cosgrove & Terhune, Attorneys for Respondent.

[fol. 22]

[File endorsement omitted]

WRIT OF ERROR—Filed Mar. 15, 1923

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Justices of the Supreme Court of the State of Washington, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Washington before you at the January term 1923 thereof, being the highest court of law or equity of said state in which a decision could be had in said suit between the State of Washington, designated as plaintiff and appellant, and W. C. Dawson & Co., a corporation, designated as defendant and respondent, wherein rights, privileges and immunities are claimed under the constitution and statutes of the United States, and the decision was against the rights and privileges specially set up and claimed under such United States statutes, a manifest error hath happened to the great damage of the said State of Washington as by its complaint appears, we being willing that error, if any hath been made, shall be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within sixty (60) days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid be inspected that said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of [fol. 23] said Supreme Court, the 14th day of March, in the year of our Lord, 1923.

Done in the City of Tacoma and County of Pierce, with the seal of the District Court of the United States for the Western District of Washington, Southern Division, attached.

F. M. Harshberger, Clerk, By Ed. M. Lakin, Deputy Clerk of the District Court of the United States for the Western District of Washington, Southern Division. [Seal of the United States District Court, Western District of Washington.]

Allowed by John F. Main, Chief Justice of the Supreme Court of the State of Washington.

Copy of within Writ received and due service of same is acknowledged, this 9 day of March, 1923.

Cosgrove & Terhune, Attorneys for Deft. in Error.

[fol. 24] CITATION—Filed Mar. 13, 1923; omitted in printing

Copy of within Citation received and due service of same is acknowledged, this 9 day of Mar., 1923.

Cosgrove & Terhune, Attorneys for Deft. in Error.

[fol. 25] IN THE SUPREME COURT OF THE STATE OF WASHINGTON

[Title omitted]

CLERK'S CERTIFICATE

I, C. S. Reinhart, Clerk of the Supreme Court of the State of Washington, hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the above entitled cause as I have been directed by a præcipe on file to certify to the Supreme Court of the United States,

And I further certify that in pursuance of the writ of error heretofore filed in this court I herewith transmit said transcript, together with the original writ of error and the original citation to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, this 18th day of April, 1923.

C. S. Reinhart, Clerk. [Seal of the Supreme Court, State of Washington.]

Endorsed on cover: File No. 29,676. Washington Supreme Court. Term No. 366. The State of Washington, plaintiff in error, vs. W. C. Dawson & Co. Filed June 11th, 1923. File No. 29,676.